

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST- 2001-10885]

RIN 2105-AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final Rule; Request for Comments

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (“the Act”). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress’ intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial payments amounting to about 50 percent of the authorized funds. This rule establishes application procedures for air carriers interested in requesting compensation under this statute.

DATES: This rule is effective October 29, 2001. Comments should be received by November 13, 2001.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST-2001-10885, Department of Transportation, 400 7th Street, SW, Room PL-401, Washington, DC 20590. Applicants for compensation should NOT send their applications to the docket; the Department will accept only those complete applications sent to the address listed in the text of this rule. We request that, in order to minimize burdens on the dockets staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10:00 a.m. to 5:00 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: <http://dms.dot.gov/>. Commenters who wish to file comments electronically should follow the instructions on the DMS web site. Interested persons can also review comments through this same web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW, Room 6402, Washington DC, 20590. Telephone 202-366-1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush and Congress enacted the Air Transportation Safety and System Stabilization Act (“the Act”), Public Law 107-42.

The Act provided financial assistance to air carriers to address a short-term liquidity crisis in the wake of the September 11 attacks. This primary objective of the Act was clearly recognized by members of both the House and Senate. See, for example, statements of Representatives Frost, Lampson, Buyer, Green and Dicks (Daily Congressional Record, September 21, 2001, at H5884–5891) and Senators Bond, Hutchinson, Rockefeller, Boxer, McCain, Feingold, and Domenici (Daily Congressional Record, September 21, 2001, at S9589 – 9597). The Act provided financial assistance in two main ways. First, the Act authorized \$5 billion in compensation to air carriers for direct and incremental losses incurred as a result of the September 11 attacks. Second, the Act authorized the issuance of up to \$10 billion in loan guarantees to air carriers. This regulation concerns only the first type of financial assistance. The latter is covered by regulations issued on October 5, 2001 (66 FR 52270, October 12, 2001), by the Office of Management and Budget (14 CFR part 1300).

Under section 101(a)(2)(A-B) of the Act, a total of \$5 billion in compensation is provided for “direct losses incurred beginning on September 11,

2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.” The Department of Transportation has already disbursed initial estimated payments of nearly \$2.5 billion of the \$5 billion amount that Congress authorized, using procedures set forth in the Department’s Program Guidance Letters that were widely distributed and posted on the Department’s web site. These payments represent about one-half of the sums estimated to be due to air carriers, and they are subject to adjustment and audit. Applicants can still receive the full amounts for which they are eligible, even if they did not apply previously. However, all applicants should note the strict 14-day (general) or 28-day (air taxi) application deadlines, as explained below.

Section-by-Section Analysis

§330.1 What is the purpose of this part?

This section states the purpose of Part 330, which is to carry out the statutory provisions of the Act with respect to compensating air carriers.

§330.3 What do the terms used in this part mean?

This definitions section incorporates terms from the Act or other existing sources. The definition of “air carrier” in the Act refers to any U.S. air carrier, as

defined in 49 U.S.C. 40102. This statutory definition is “a citizen of the United States undertaking, by any means, directly or indirectly, to provide air transportation.” This definition includes not only entities that operate aircraft (“direct” air carriers) but also other entities that are involved in air transportation but do not operate aircraft (“indirect” air carriers, such as freight forwarders and some public charter operators). As noted in §330.11, not all “air carriers” are eligible for compensation, however.

The definitions of available seat-miles (ASMs) and revenue ton-miles (RTMs) are derived from the air carrier reporting requirements of 14 CFR Part 241. We note that, under the statutory formula of §103(b)(2) of the Act, combined cargo/passenger flights are eligible for compensation only on the basis of ASMs. Only RTMs flown on all-cargo freighter aircraft are eligible for compensation on the basis of RTMs.

The definition of “air taxi operator” is an air carrier, other than a commuter air carrier, that holds authority under 14 CFR Part 298 and 14 CFR Part 121 or 135. We believe that the Congress intended that air taxis be eligible for compensation, as long as they are able to accurately report the ASMs they have flown or the RTMs they have transported, as well as clearly document direct and incremental losses resulting from the attacks, to the Department. We are including provisions in the regulation to facilitate their participation in the program. At the same time, we understand that many air taxi companies are likely to have flown relatively few ASMs or RTMs, compared to the universe of

ASMs or RTMs flown by the entire industry. For example, in CY 2000, the industry flew over 973 billion ASMs. Consequently, the statutory formula may result in very small amounts of compensation being payable to companies that fly relatively few ASMs.

§330.5 What funds will the Department distribute under this part?

The Department plans to disburse the remaining funds available under the Act in two additional installments. In the second installment, covered by the procedures of Part 330, we plan to disburse an amount that, cumulatively with the funds we have already disbursed, will not exceed 85 percent of the amount authorized for carriers. The Department is not establishing, in this regulation, a specific percentage of authorized funds that will be disbursed as part of this second installment. The Department anticipates having a clearer picture of the collective losses of air carriers after we review the submissions from carriers under this rule.

We will subsequently establish a uniform across-the-board percentage figure that will determine the percentage of authorized funds that all eligible carriers will receive in this second installment. The Department wishes to avoid any situation in which a carrier is “overpaid,” resulting in our having to recoup payments from a carrier.

The timing of the third installment must comport with the statutory directive that compensation relate to actual losses “incurred” through the end of

December 2001. The Department will announce at a later date the procedures applicable to the third installment.

§330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

Consistent with §330.5, individual carriers will receive compensation not to exceed 85 percent of the estimated compensation for which they demonstrate that they are eligible, cumulatively with payments they have previously received. The amount will depend on the percentage amount of total available compensation the Department determines to make available through this second installment. As the example in the rule text points out, a carrier that had already received 50 percent of the estimated compensation for which it is eligible would receive an additional 35 percent as part of the second installment, if the Department had determined that all carriers would receive 85 percent of their estimated compensation through the second installment.

We emphasize that carriers will only receive compensation for which they demonstrate they are eligible. To be eligible to receive any compensation at all, an air carrier must demonstrate to the satisfaction of the Department that it has actually incurred direct or incremental losses as defined in the Act. The burden of proof with respect to eligibility rests with carriers applying for compensation.

The Department is retaining discretion to make a disbursement of funds before December 31, 2001, to individual carriers of the full amount of

compensation for which they are eligible under the Act. If a carrier is able to demonstrate to the satisfaction of the Department, before December 31, 2001, that it has already suffered actual losses that exceed the formula amount of compensation for which it demonstrates and documents it is eligible in accordance with the requirements set forth in this rule, the Department could disburse the complete amount of compensation for which the carrier is eligible under the statutory formula without waiting for December 31.

A carrier which requests disbursement of a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the Department's ability to establish a fixed, comprehensive total of the ASMs and RTMs flown by all eligible air carriers during the relevant period to be used as the final basis for the total compensation formula for all eligible air carriers as established in the Act.

§330.9 What are the limits on compensation to air carriers?

This section restates the Act's provision that a carrier is eligible for the lesser of its direct and incremental losses, as defined in the Act, or the amount calculated through the following formula, set forth in section 103(b)(2) of the Act:

(2) in the case of –

(A) flights involving passenger-only or combined passenger and cargo transportation, the product of --

(i) \$4,500,000,000; and

(ii) the ratio of –

(I) the available seat miles of the carrier for the month of August 2001 as reported to the Secretary; to

(II) the total available seat miles of all such carriers for such month as reported to the Secretary; and

(B) flights involving cargo-only transportation, the product of –

(i) \$500,000,000; and

(ii) the ratio of –

(I) the revenue ton miles or other auditable measure of the air carrier for cargo for the latest quarter for which data is available as reported to the Secretary; to

(II) the total revenue ton miles or other auditable measure for all such air carriers for cargo for such quarter as reported to the Secretary.

If any air carrier receives more compensation than it demonstrates to the satisfaction of the Department that it is eligible for under the Act, the carrier will be required to repay the excess amount to the Department.

§330.11 Which carriers are eligible to apply for compensation under this part?

Direct air carriers that engage in air transportation operations, including certificated air carriers, commuter air carriers, and air taxis, are eligible to apply for compensation. Entities that are outside the definition of “air carrier,” such as foreign air carriers, commercial operators, travel and ticket agents, and general aviation operators (including corporate air services and flight training schools), are not.

As noted above, the general statutory definition of “air carrier” includes both direct and indirect air carriers. However, under the specific statutory language setting forth the “Special Rules for Compensation,” we believe that Congress intended compensation only for those entities that actually operate “flights.” Moreover, entities that actually fly aircraft were the overwhelming focus of the Congressional discussion of the purpose of compensation under the Act. A reading of the statute to extend compensation payments to other entities and individuals that do not actually fly aircraft would make it difficult, if not impossible, to distinguish among the many different kinds of contractual arrangements that exist for providing air transportation. We believe that, although a variety of air carriers and other entities suffered losses as a result of the terrorist attacks – public charter operators, travel agents, freight forwarders, employees, concessionaires, etc. -- Congress limited the Act to provide financial assistance to help keep air carriers that actually operate flights flying.

Congress designed the compensation system of §102(b)(2) consistent with its intent in this regard. The Act provides that air carriers would be eligible to receive the lesser of the amount of their direct and incremental losses or an amount calculated by using the statutory formula. Any air carrier, direct or indirect, may be able to demonstrate direct and incremental losses. However, unless the amount of compensation that would be payable to an air carrier under the statutory formula can be calculated, there is no way of implementing Congress' direction that the lesser of direct and incremental losses on one hand, or the formula-based payment on the other, be payable to the air carrier.

The Act does not permit the Department to disburse compensation based solely on a showing of direct and incremental losses, absent the application of the formula. Doing so could permit a carrier to receive a greater amount of compensation than that to which the Act entitles it (i.e., because there would be no formula "cap" to limit the amount of compensation below the amount of direct and incremental damages). Such a result would be inconsistent with the Department's task of implementing the Act responsibly in accordance with the intent of Congress.

With respect to carriers providing "flights involving passenger-only or combined passenger and cargo transportation" (emphasis added), the formula is calculated based on a ratio involving an individual carrier's ASMs, as reported to the Secretary, to those for all such carriers. Indirect air carriers (e.g., public charter operators) do not report ASMs to the Department under 14 CFR Parts 241

or 298. Since they do not operate aircraft, they cannot be said to have ASMs of their own at all. Indeed, the regulatory definition of “available seat-miles” refers in part to “the aircraft miles flown on each flight stage” (emphasis added), and indirect air carriers do not “fly” miles on flight stages. Any ASMs that these indirect air carriers might calculate would be duplicative of direct air carrier ASMs. For these reasons, we believe that the formula cannot be calculated for indirect air carriers, who are therefore ineligible to receive compensation. This is consistent with Congress’ focus on providing compensation to carriers who actually operate aircraft.

For carriers providing “flights involving cargo-only transportation” (emphasis added), the Act calculates the formula in a similar way, with the basic measure being RTMs reported to the Department under 14 CFR Part 291. The same points made above with respect to passenger-only or combined passenger/cargo carriers apply to cargo carriers as well. An indirect air carrier in the cargo transportation field, such as an air freight forwarder, does not operate flights with aircraft and neither generates nor reports RTMs. Revenue ton-miles are defined as a ton of revenue traffic “transported” one mile, not “placed” or “contracted for.” Any RTMs it would report would necessarily duplicate those of the direct air carrier that actually operated the flights involved. Indeed, an air freight forwarder could reasonably be viewed as a purchaser, rather than a provider, of air transportation services.

This interpretation is also consistent with the general purposes of the Act. To the extent that the compensation program helps direct air carriers remain operating, indirect air carriers such as air freight forwarders clearly benefit. Paying compensation to indirect air carriers would reduce the funds available to direct air carriers, making it more likely that direct air carriers would not get all of the compensation that would otherwise be payable to them. This could contribute to failures of direct air carriers that, in turn, would harm the interests of indirect air carriers.

§330.13 If an air carrier received compensation under the Act previously, does it have to apply now?

§330.15 If an air carrier did not apply for compensation under the Act previously, may it apply for the first time now?

§330.17 Must an air carrier apply for compensation under this part now to be eligible for funds that will be distributed in the future?

These three related sections make a series of important points that air carriers should understand. All air carriers who want compensation under the Act must apply under this rule. This includes carriers who previously applied for and received funds from the first installment. A carrier who received funds under the first installment must submit an application under this rule even if it does not intend to seek further compensation. If a carrier did not apply for funds from the first distribution, it can apply now. Application under this part is mandatory, not only for carriers which wish to receive this second installment of

compensation, but also from the third installment of funds to be distributed next year.

§330.21 When must air carriers apply for compensation?

§330.23 To what address must air carriers send their applications?

§330.25 What are the components of an air carrier's application for compensation?

These sections give air carriers, other than air taxis, 14 days from the effective date of the rule to ensure that their complete applications reach the Department. In order to facilitate the participation of air taxis, the regulation provides them 28 days. These are firm deadlines. Unless a carrier can demonstrate to the satisfaction of the Department that extremely unusual extenuating circumstances, completely beyond its control, prevented it from making a timely submission, the Department will not accept a late submission.

Likewise, the use of the address stated in the rule is mandatory. The Department will not accept applications sent elsewhere. In addition, applications must be in hard copy. Faxes and e-mails are not acceptable, because of the difficulties they create in handling large volumes of documents. In discussions with DOT staff, many carriers have indicated their intention to hand-carry applications to the Department. The Department will make arrangements to receive such packages in a way consistent with current Departmental office

security procedures. Applications also must be complete, containing all the required information. The Department will not accept incomplete applications.

§330.27 What information must certificated and commuter air carriers submit?

§330.29 What information must air taxi operators submit ?

Forms 330-A, 330-B, and 330-C on which carriers must submit data to support their applications, are found in the Appendices to Part 330. Carriers should note that forms for certificated and commuter passenger and combination passenger/cargo carriers are found in Appendix A, forms for certificated cargo carriers are found in Appendix B, and forms for air taxis are found in Appendix C. Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights and which are seeking compensation on both an ASM and an RTM basis must submit both sets of forms in Appendices A and B to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

In submitting the information on these forms, carriers must report total net income after taxes, based on application of standard corporate income tax rates, as well as other financial information. The Department has, however, tentatively determined to accept applications for compensation of losses calculated on the basis of pre-tax data. The rationale for this tentative

determination is that the Act is intended to compensate air carriers for losses related to their actual operations, realized prior to taxation. Under the Act, compensation received is taxable income. The Act subjects this income to taxation at the end of the fiscal year when air carriers compute their corporate taxes, as they would had the carrier earned that income from the marketplace if the terrorist attacks had not occurred. In addition, we believe that this approach avoids prejudice to eligible air carriers based on their varied tax positions. Actual losses must be net of savings on a number of items, however (e.g., fuel consumption, reductions in staff).

§330.31 What data must air carriers submit concerning ASMs or RTMs?

There are three points in this section that the Department wishes to emphasize. First, since the statute relies on ASMs and RTMs “reported to the Secretary” (§103(b)(2) of the Act), we must rely on the reports of these statistics already made to the Department. Carriers are not at liberty to modify their reports, except as directed by the Department (e.g., to correct over-reported data) and to avoid double counting or the reporting of activity by code-sharing or alliance partners.

Second, we recognize that, unlike certificated and commuter air carriers that file Form 41 or Part 298-C reports, air taxis do not routinely file with the Department ASM or RTM reports or traffic, financial, and other operational data. The Department is therefore requiring additional information from air taxis that

is necessary to verify their claims for compensation. We are asking such carriers to provide information about their operations with their applications for compensation which will allow for a calculation of ASMs or RTMs, consistent with Bureau of Transportation Statistics (BTS) requirements and guidance (see 14 CFR Part 298). If there are any direct air carriers, other than air taxis, that legitimately have not submitted ASMs or RTMs to the Department, they would also have to provide such information.

Any air carrier that calculates its ASMs or RTMs in connection with its applications must certify under penalty of law that the calculation is accurate and must fully “show its work” (i.e., submit the data and assumptions on which the calculation is based and describe how the result was reached). The Department provides more detailed guidance on the form in Appendix C. The Department, after reviewing such submissions, has the discretion to modify or reject the carrier’s calculation.

Third, we have been asked how the Department views the situation of carriers that operate under “wet-lease” arrangements. In a wet lease, a carrier (the “lessor”) leases its aircraft and crew to another carrier (the “lessee”) for an operation. The question arises as to whether the lessor or the lessee can claim the ASMs or RTMs resulting from the operation for purposes of an application for compensation.

The statute bases the compensation formula on ASMs or RTMs “as reported to the Secretary.” Consequently, the Department believes that the

lessor can appropriately claim the ASMs or RTMs resulting from an operation only when that is how the ASMs or RTMs were reported to the Department, in accordance with BTS regulations and guidance. Under 14 CFR Part 241, §241.25, Appendix, (m)(2)(ii), “Wet-lease arrangements shall be reported by the lessee as though the leased aircraft and crew were part of the lessee’s own fleet.” BTS discussed this requirement in Office of Airline Information Accounting and Reporting Directive No. 217, issued July 28, 1997. This BTS guidance document stated the following:

Under the Form 41 and T-100 traffic reporting systems, wet-lease operations are reported by a lessee as though the leased aircraft and crew were a part of the lessee’s own fleet and crew. [citation to §241.25 omitted] This principle removes the uncertainty of which carrier, the lessee or the lessor, reports the detailed traffic and financial information from a wet-lease arrangement, and precludes two carriers reporting the same traffic movement while assuring that the traffic is reported by one carrier. This principle also applies for wet-lease operations involving commuter air carriers.

This approach is consistent with the Act and other provisions of this regulation.

We are aware that section 102(b)(2)(B)(ii) of the Act provides that the formula calculation is to be based on “revenue ton-miles or other auditable measure of the air carrier for the latest quarter for which data is available as reported to the Secretary” (emphasis added). Neither the language of the statute nor its legislative history provides any information on what such an “other auditable measure” would be. To fulfill the purpose of the statutory formula, such a measure would have to be readily verifiable, could not be duplicative of

RTMs reportable by direct air carriers, and would have be comparable to RTMs so that it could be part of the basis for the formula “cap” on the compensation payable to a carrier for its direct and incremental losses. The Department also believes that any “other auditable measure” would have to be a measure applicable to air carriers for cargo generally. It would not be feasible to attempt to make the comparison referred to above on the basis of individual, carrier-specific measures.

The language of the statute requires the Department to apply such an “other auditable measure” in the same way that it applies RTMs that are “reported to the Secretary.” It may be possible, for example, that a calculation of RTMs, based on auditable information regarding flights actually flown by the air carrier and prepared in accordance with Bureau of Transportation Statistics regulations and guidance, but that were not required to be reported to the Secretary, could meet these criteria. On the other hand, for example, financial data evidencing losses, without regard to RTMs actually flown by the air carrier, are clearly not such a measure. The Department will review comments that propose “other auditable measures” and could, if warranted, add language to this rule permitting submissions by cargo carriers who actually operate aircraft based on such measures, if they meet the criteria discussed above. Because the Department does not now know of specific “other auditable measures” that meet the criteria for such a measure, however, we are not including any provisions to this effect in today’s rule.

§330.33 Must carriers certify the truth and accuracy of data they submit?

This section provides the form of a certification that the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, or equivalent official, of a carrier must make with respect to applications for compensation and participation in the compensation program.

§330.35 What records must carriers retain?

§330.37 Are air carriers that participate in this program subject to audit?

In order to maintain the Department's ability to audit the compensation program, we must require air carriers to retain a significant amount of information for review by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

Carriers will have to provide an independent auditor's review of their forecasts before becoming eligible for the final installment of compensation. We also want air carriers to be aware that, before becoming eligible to receive payment from the final installment of compensation under the Act, they must report to the Department actual losses for the period September 11, 2001 – December 31, 2001 that are the result of the terrorist attacks.

Carriers that can demonstrate and document to the Department's satisfaction that they suffered actual losses before December 31, 2001 that exceed the formula amount of compensation may request a final installment in CY 2001 subject to the terms and conditions discussed in connection with §330.7 above.

Carriers will have to support these reports of losses with audited financial statements or, for carriers who do not normally prepare audited financial statements, relevant tax records and supporting documents. In addition, the Department may require the carrier to provide whatever documents or other supporting data are necessary to verify the carriers' reported losses. All claims by carriers are subject to audit both by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

REGULATORY ANALYSES AND NOTICES

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, et. seq., are not being provided. On the same basis, we have determined that there is good cause to

make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA), specifically the application documents that air carriers must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Forms) for Compensation of Air Carriers

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation would use the data submitted by the air carriers to determine each carrier's compensation for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11, 2001, terrorist attacks on the United States as defined in the Act.

Frequency: For this final rule, the Department will collect the information once, with air carriers reporting on Forms 330-A, 330-B, and 330-C.

Respondents: The respondents include an estimated 430 air carrier applicants. This number is based on an estimate of 300 air taxis (about twice as many as have contacted the Department to date in connection with this program) and 130 other carriers choosing to submit applications.

Burden Estimate: Total air carrier burden of \$146,000 based on total burden hours of 5,320 for 430 applicants and a weighted average cost per hour of \$27.44.

Form(s): The data would be collected on Forms 330-A, 330-B, and 330-C as shown in the Appendices to this rule.

Average Burden Hours per Respondent: A weighted average of 12.4 hours per application.

The Office of Management and Budget has approved this information collection on an emergency basis, with Control Number 2105-0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs – transportation, Reporting and recordkeeping requirements.

ISSUED THIS 24TH DAY OF OCTOBER, 2001, AT WASHINGTON, DC

Read C. Van De Water

Assistant Secretary for Aviation
and International Affairs

For the reasons set forth in the preamble, the Department adds a new Part 330 to Title 14, Code of Federal Regulations, to read as follows:

PART 330 -- PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Sec.

Subpart A – General Provisions

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- 330.31 What data must air carriers submit concerning ASMs or RTMs?
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- 330.35 What records must carriers retain?

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Appendix A to Part 330 – Forms for Certificated and Commuter Air Carriers

Appendix B to Part 330 – Forms for Certificated Cargo Carriers

Appendix C to Part 330 – Forms for Air Taxi Operators

Authority: Pub. L. 107-42, 115 Stat. 230 (49 U.S.C. 40101 note).

Subpart A – General Provisions

§330.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 101(a)(2) of the Air Transportation Safety and System Stabilization Act (“the Act”), Public Law 107-42, 115 Stat. 230 (49 U.S.C. 40101 note). This statutory provision is intended to compensate air carriers for direct losses incurred as a result of the Federal ground stop order issued by the Secretary of Transportation, and any subsequent orders, following the terrorist attacks of September 11, 2001, and incremental losses incurred from September 11 through December 31, 2001, as the result of those attacks.

§330.3 What do the terms used in this part mean?

The following terms apply to this part:

Air carrier means any U.S. air carrier, as defined in 49 U.S.C. 40102.

Air taxi operator means an air carrier, other than a commuter air carrier, that holds authority issued under 14 CFR Part 298 and 14 CFR Part 121 or Part 135.

Available seat-miles (ASMs) means the aircraft miles flown on each flight stage by an air carrier multiplied by the number of seats available for revenue use on that stage.

Certificated air carrier means an air carrier holding a certificate issued under 49 U.S.C. 41102 or 41103.

Commuter air carrier means an air carrier as defined in 14 CFR 298.2(e) that holds a commuter air carrier authorization issued under 49 U.S.C. 41738.

Incremental loss means a loss incurred by an air carrier in the period of September 11, 2001 – December 31, 2001, as a result of the terrorist attacks on the United States of September 11, 2001. It does not include any loss that would have been incurred if the terrorist attacks on the United States of September 11, 2001, had not occurred.

Revenue ton-miles (RTMs) means the aircraft miles flown on each flight stage by the air carrier multiplied by the number of tons of revenue cargo transported on that stage. For purposes of this part, RTMs include only those

resulting from all-cargo flights flown by the air carrier submitting the claim for compensation.

§330.5 What funds will the Department distribute under this part?

Through the regulations in this part the Department is distributing compensation not to exceed 85 percent of the total funds available, cumulatively with funds distributed previously.

§330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

(a) If you are an eligible air carrier that has not previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the compensation for which you demonstrate you are eligible under the Act.

(b) If you are an eligible air carrier that has previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the estimated compensation for which you demonstrate you are eligible under the Act, less the amount of estimated compensation you received previously. For example, suppose you have already received 50 percent of the estimated compensation for which you are eligible. If, under this part, the Department determined that all carriers would receive 85 percent of the compensation for which they are eligible as part of the second installment of compensation, your payment for the second installment would be an additional 35 percent of the estimated compensation for which you are eligible under the Act.

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible. A carrier that requests a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§330.9 What are the limits on compensation to air carriers?

(a) You are eligible to receive compensation equaling the lesser of your direct and incremental losses or the amount calculated by the formula set forth in section 103(b)(2) of the Act.

(b) In the event that the compensation for which we determine you are finally eligible as provided in paragraph (a) of this section is less than the amount the Department has disbursed to you, you are required to repay the excess amount to the Department.

§330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, or an air taxi, you are eligible to apply for compensation under Subpart B of this part.

(b) If you are an air freight forwarder (as described in 14 CFR part 296), public charter operator (as described in 14 CFR part 380), or other indirect air carrier (such as a contract bulk fare operator), you are not eligible to apply for compensation under this part.

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

§330.13 If an air carrier received compensation under the Act previously, does it have to apply now?

Yes, if, as an air carrier, you previously received compensation under section 101(a)(2) of the Act, you must, in all cases, submit an application under this part. You must do so even if you are not seeking additional compensation.

§330.15 If an air carrier did not apply for compensation under the Act previously, may it apply for the first time now?

Yes, if you are an air carrier that did not apply for compensation previously under the Act, you may apply for the first time under this part.

§330.17 Must an air carrier apply for compensation under this part now to be eligible for funds that will be distributed in the future?

Yes, as an air carrier, you must apply under this part to be eligible to receive funds from the second and third installments of compensation. If you do not apply under this part, you will not be eligible to receive funds distributed in this or subsequent installments including those distributed in CY 2002.

Subpart B – Application Procedures

§330.21 When must air carriers apply for compensation?

(a) If you are an eligible air carrier other than an air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 13, 2001.

(b) If you are an eligible air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 26, 2001.

(c) If you do not meet the applicable deadline for submitting your application for compensation, the Department will not accept it, unless you document extremely unusual extenuating circumstances, completely beyond your control, that prevented you from submitting your application in a timely manner.

§330.23 To what address must air carriers send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not by fax or electronic means) to the following address:

U.S. Department of Transportation
Aviation Relief Desk (X-50)
400 7th Street, SW
Room 6401
Washington, DC 20590

(b) If your complete application is not sent to the address in paragraph (a) of this section as required in this section, the Department will not accept it.

§330.25 What are the components of an air carrier's application for compensation?

As an air carrier applying for compensation under this part, you must provide to the Department all materials described in §§330.27 – 330.33. The Department will not accept your application if it does not comply fully with the requirements of this subpart.

§330. 27 What information must certificated and commuter air carriers submit?

(a) If you are a certificated or commuter air carrier that provides passenger and/or combination passenger/cargo service and are applying for compensation under this part, you must submit Form 330-A, found in Appendix A to this part.

(b) If you are a certificated carrier operating all-cargo service and are applying for compensation under this part, you must submit Form 330-B, found in Appendix B to this part. Data for all-cargo carriers supplied on the forms in Appendix B to this part must be tied only to the airline portion of their businesses and must exclude activities usually associated with indirect air carriers or with ground services.

(c) Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights must submit both sets of forms in Appendices A and B to this part (Forms 330-A and 330-B) to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

(d) You must include the following financial information in Part 1 of Forms 330-A and 330-B and the Operational Data as required by Part 2 of that form for the period September 11 through September 30, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning on that date and ending September 30, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001, forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your actual results for that same period reflecting any losses that were a direct result of the terrorist attacks of September 11, 2001.

(3) The difference between your forecast profits/losses and actual results for that period (*i.e.*, the difference between the figures in paragraphs (d)(1) and (2) of this section).

(4) The actual losses you report must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (e.g., commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

(e) You must include the following financial information in Part 3 of Form 330-A and 330-B and the Operational Data as required by Part 4 of those forms for the period October 1 through December 31, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning October 1, 2001, and ending December 31, 2001. This forecast must

reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001 forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your post-September 11, 2001, forecast of incremental losses estimated to be incurred for the period beginning October 1, 2001, and ending December 31, 2001 as a result of the September 11, 2001, terrorist attacks. This forecast must incorporate all cost reductions associated with capacity reductions and furloughs you made due to the reduced demand for air service after the September 11th attacks (*e.g.*, employee pay adjustments and furloughs, changes in aircraft fleet in service, schedule and capacity changes, etc.).

(3) The difference between your pre-September 11 forecast profit-loss forecast for the October 1 – December 31, 2001, period and your post-September 11 forecast for incremental losses for that period (i.e., the difference between the figures in paragraphs (e)(1) and (2) of this section).

(f) Estimated losses you report for the October 1 – December 31 period must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.*, commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business

recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

§330.29 What information must air taxi operators submit on Form 330-C?

Air taxi operators are required to complete Form 330-C as shown in Appendix C to this part. Explanatory notes are included on that Form.

§330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (c) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your systemwide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (c) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) If you have not reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section, you may submit your calculation of ASMs or RTMs to the

Department with your application. Your calculation must include only your own completed flights, and not flights flown for you by other air carriers. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(d) In calculating and submitting ASMs and RTMs for purposes of this section, there are certain things you must not do:

(1) Except as necessary to comply with paragraphs (d)(2) and (d)(3) of this section or at the direction of the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department or add previously unreported ASMs or RTMs to your total. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(4) If you are an air carrier that “wet leases” aircraft and crews to other carriers, your calculations and submissions of ASMs and RTMs must be based on ASMs or RTMs as reported to the Secretary in accordance with previously established reporting requirements of the Bureau of Transportation Statistics (see

paragraphs (a) and (b) of this section). Like other carriers, you must demonstrate your losses through the data submitted in order to be eligible for compensation.

§330.33 Must carriers certify the truth and accuracy of data they submit?

Yes, with respect to all information submitted or retained under §§330.27 – 330.31 and 330.35, your Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO) or, if those titles are not used, the equivalent officer, must certify that the submitted information was prepared under his or her supervision and is true and accurate, under penalty of law.

§330.35 What records must carriers retain?

As an air carrier that applies for compensation under this part, you must retain records as follows:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for compensation of direct and incremental losses pursuant to Sections 101, 103, and 106 of the Act. This requirement includes, but is not limited to, the following:

(1) You must retain supporting evidence and documentation demonstrating the validity of the data you provide under §§330.27 – 330.31.

(2) You must retain documentation verifying that your pre-September 11, 2001, forecast was the most recent forecast available to that date.

(3) You must also retain documentation outlining the assumptions made for all forecasts and the source of the data and other inputs used in making the forecasts.

(4) You must obtain and retain all reports, working papers, and supporting documentation pertaining to audits or review conducted by independent auditors under the requirements of this part.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

§330.37 Are carriers which participate in this program subject to audit?

(a) All payments you receive from the Department of Transportation under this program are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent auditor's review of the reasonableness and accuracy of your forecasts and data. You must submit the results of this audit to the Department with your application for payment of the final installment.

Appendix A to Part 330 – Forms for Certificated and Commuter Air Carriers

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

**APPLICATION FOR COMPENSATION
FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER
AND COMBINATION PASSENGER/CARGO SERVICE)**

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

**FINANCIAL DATA
(in whole dollars)**

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	
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PART 2: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30- 01	Actual Results for the Period 9-11-01 through 9-30- 01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare (\$)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM (cents)			
Operating Expense per ASM (cents)			

NAME OF AIR CARRIER	
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PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31- 01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	
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PART 4: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01- 01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare (\$)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM			
Operating Expense per ASM			

NAME OF AIR CARRIER	
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Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (<i>e.g.</i> , checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-A) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT (18 U.S.C. 1001)

Certifying Officer (signature)

Date

Print Name and Title (CEO, CFO or COO)

Telephone Number

Appendix B to Part 330 – Forms for Certificated Cargo Carriers

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

**APPLICATION FOR COMPENSATION
FOR CERTIFICATED CARRIERS
THAT PROVIDE ALL CARGO OPERATIONS ONLY**

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

**FINANCIAL DATA
(in whole dollars)**

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	
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Part 2: OPERATIONAL DATA
(in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30- 01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30- 01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

NAME OF AIR CARRIER	
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Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	
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PART 4: OPERATIONAL DATA
(in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

NAME OF AIR CARRIER	
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Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	— — — — — (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (<i>e.g.</i> , checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-B) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT. (18 U.S.C. 1001)

Certifying Officer (signature)

Date

Print Name and Title (CEO, CFO or COO)

Telephone Number

Appendix C to Part 330 – Forms for Air Taxi Operators

**AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT
APPLICATION FOR COMPENSATION
FOR AIR TAXI OPERATORS**

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

**PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD
SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001
(in whole dollars)**

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

NAME OF AIR CARRIER	
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**PART 2: REPORT OF OPERATING STATISTICS FOR
AIR TRANSPORTATION FOR HIRE***
(in whole numbers)

FOR AIRCRAFT USED IN PASSENGER, PASSENGER/CARGO & OTHER TRANSPORT SERVICES FOR THE MONTH OF AUGUST 2001						
Aircraft Type	Number of Type in Use for Transport Services**	Number of Seats Available per Aircraft for Use by Paid Passengers	Revenue Aircraft Miles Flown in Transport Services	Available Seat Miles in Transport Services	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

FOR AIRCRAFT USED ONLY FOR ALL-CARGO OPERATIONS*** FOR THE QUARTER ENDED JUNE 30, 2001						
Aircraft Type	Number of Type in Use for Transport Services**	Available Payload Capacity (in pounds)	Revenue Aircraft Miles Flown in Transport Services	Cargo Revenue Ton Miles in Transport Services (if known)	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

* Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.

** This number should be the same number as listed on the operator's current Part 298 registration and current FAA-issued operations specifications.

*** For all-cargo operations, please note aircraft that are operated under contract for another express or all-cargo carrier and identify those carriers and provide details on a separate, attached sheet.

NOTE: If the operator records and reports aircraft miles, the operator should compute and enter available seat miles by multiplying the number of seats times the aircraft miles. If the operator does not report aircraft miles, DOT will compute the available seat miles. If the operator records and reports cargo RTMs, the operator should enter the amounts directly on the form. If not, DOT will estimate the RTMs based on the other data submitted. All carriers, however, must report airborne hours and departures.

NAME OF AIR CARRIER	
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**PART 3: ESTIMATE OF LOSS FOR THE PERIOD
OCTOBER 1, 2001 TO DECEMBER 31, 2001
(in whole dollars)**

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31- 01	Current Forecast for the Period 10-01-01 through 12-31- 01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

NAME OF AIR CARRIER	
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PART 4: OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Forecast for 10-01-01 through 12-31-01
Total operating revenues				
Total operating expenses				
Total operations for hire (departures)				
Total available seat miles OR				
Total revenue ton miles				
Total aircraft in fleet:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Seats available per aircraft:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total aircraft miles flown:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total airborne hours:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Available payload capacity (in lbs.) (all-cargo operations only):				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			

NAME OF AIR CARRIER	
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PART 5: HISTORICAL OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data	Month of Sept 2000	Month of Oct 2000	Month of Nov 2000	Month of Dec 2000		Month of July 2001	Month of Aug 2001
Total operating revenues							
Total operating expenses							
Total operations for hire (departures)							
Total available seat miles OR							
Total revenue ton miles							
Total aircraft in fleet:							
(Show aircraft types in the next column) 1)							
2)							
3)							
4)							
5)							
6)							
Seats available per aircraft:							
(Show aircraft types in the next column) 1)							
2)							
3)							
4)							
5)							
6)							
Total aircraft miles flown:							
(Show aircraft types in the next column) 1)							
2)							
3)							
4)							
5)							
6)							
Total airborne hours:							
(Show aircraft types in the next column) 1)							
2)							
3)							
4)							
5)							
6)							
Available payload capacity (in lbs.) (all-cargo operations only):							
(Show aircraft types in the next column) 1)							
2)							
3)							
4)							
5)							
6)							

NAME OF AIR CARRIER	
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Part 6: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	— — — — — (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (<i>e.g.</i> , checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-C) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT(18 U.S.C. 1001).

Certifying Officer (signature)

Date

Print Name and Title (CEO, CFO or COO)

Telephone Number

EXPLANATORY NOTES:

1. In order to avoid the possibility of misinterpretation, we are requiring that numbers or notations (for example, "N/A") be entered into all data blocks on all forms even if those numbers are zero. We also note that all amounts are to be reported in whole numbers.
2. The required forecasted amounts should be based on a forecasting and/or budgeting approach or similar accounting system if the air carrier routinely uses that method. For those carriers whose accounting systems or methodologies rely more on actual or short run projections, we ask that they make a "good faith" effort to categorize their revenues and expenses according to the required forms. In this regard, the following may provide additional assistance.
3. As general guidance, we include the following information that has been adapted from 14 CFR Part 298 (Section 298.62) or 14 CFR Part 241. Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.
4. Total operating revenues generally include gross revenues accruing from services ordinarily associated with air transportation. It is meant to include revenue derived from scheduled service, on demand and nonscheduled service operations.
5. In general, total operating expenses include expenses of the type usually and ordinarily incurred in the performance of air transportation. It includes expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground, in controlling and protecting the in-flight movement of aircraft; landing and handling aircraft on the ground; selling transportation, servicing and handling passenger and cargo traffic; promoting the development of traffic; and administering operations generally. It shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation and all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services.
6. Non-operating income includes such items as interest income and other similar investments. It may also include capital gains (for example, aircraft sales). Non-operating expenses include interest expense and other expenses attributable to financing or other activities that are extraneous to and not an integral part of air transportation or its incidental services. It may also include capital losses (for example, aircraft sales).
7. We note that claims for compensation cannot be based solely on lost revenues, that is, the total revenue that an air taxi operator expected to receive from flights that would have been flown but were cancelled due to the DOT-mandated flight stoppage. While these amounts would provide information on the changes in total operating revenues, it is important to recognize that changes in total operating expenses must also be considered in calculating operating income and net income which is ultimately used to determine compensation. Also, for those carriers with less sophisticated accounting systems, the calculation of forecasted total operating expenses might be based on an analysis of fixed costs (those that stay the same regardless of the number of flights or changes in passenger and cargo traffic) and variable costs (those that change in proportion to the level of operations and traffic volume).
8. All carriers should be able to provide actual financial results for the period of September 11 to September 30, 2001, as required. We will not accept incomplete forms or reports that are submitted in lieu of the required forms and we will not accept the submission of invoices, flight logs, sales records, calendar notations of events or other similar documents in lieu of the required forms. However, supporting documentation must be retained for audit purposes.